

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
IDEANOMICS, INC., et al, Case No. 24-12728 (CTG)
824 Market Street
Wilmington, Delaware 19801
Debtors.
Thursday, December 5, 2024

TRANSCRIPT OF HEARING RE: FIRST-DAY MOTIONS
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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J. Scott Victor
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SSG CAPITAL ADVISORS

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1 (Proceedings commence at 12:45 p.m.)

2 THE COURT: Good afternoon, all. This is Judge
3 Goldblatt. We are on the record in In Re Ideanomics, which
4 is Case Number 24-12728.

5 We are proceeding this afternoon by way of Zoom,
6 with one exception. I just want to put on the record that
7 Mr. Cudia from the U.S. Trustee's Office is actually here in
8 the courtroom. There were issues that closed our building
9 yesterday afternoon, and then the Boggs Building where the
10 U.S. Trustee is located today, so Mr. Cudia has asked to
11 appear in person, and our court is always open, so ...

12 So, with that, I'm happy to pass the virtual podium
13 to counsel for the debtor to take us through our agenda this
14 afternoon.

15 MR. PALACIO: Thank you, Your Honor. May it please
16 the Court, Ricardo Palacio of Ashby & Geddes here as proposed
17 Delaware counsel to Ideanomics, Inc. and its affiliated
18 debtors and debtors-in-possession.

19 At the outset, Your Honor, I'd like to thank Your
20 Honor, your staff, and the Court generally for accommodating
21 us on such short notice and making yourself available today.
22 As with any Chapter 11 case, the first-day hearing is of
23 critical importance, and this is no different.

24 Your Honor, with me today are my colleagues from
25 Foley & Lardner. And in a moment, I will cede the podium to

1 Mr. Simon and Mr. Mohan from Foley.

2 What we want to do today, Your Honor, is -- and
3 you'll hear this from Mr. Simon -- is give you an overview of
4 the debtors very generally and then walk you through the
5 agenda.

6 I will say for the record -- and I think Mr. Cudia
7 from the U.S. Trustee's Office will note -- that we have been
8 working very closely with him and his office. And I'm happy
9 to report that, I think save for one issue, I think we are
10 resolved on virtually all of the comments that the U.S.
11 Trustee has with respect to the first-day motions.

12 So, with that, Your Honor, and again, consistent
13 with the theme that I've laid out, I'm going to cede the
14 podium to Mr. Simon.

15 And I should note at the outset that Your Honor has
16 entered ordered with respect to the *pro hac vice* motions that
17 we filed on behalf of the Foley counsel, so thank you for
18 that.

19 And with that, I'll cede the podium to Mr. Simon.

20 THE COURT: Okay. Very well. Thank you very much,
21 Mr. Palacio.

22 Mr. Simon.

23 MR. SIMON: Good afternoon, Your Honor. John Simon
24 of Foley & Lardner, proposed bankruptcy counsel to the
25 debtors and debtors-in-possession.

1 I want to reiterate my thanks and our thanks to the
2 Court for accommodating us here with a quick first-day
3 hearing. We greatly appreciate Your Honor and your staff and
4 all of your efforts.

5 I'm here, as mentioned, with my colleagues from
6 Foley, Tim Mohan, in addition to our colleagues at Ashby &
7 Geddes, we are joined by the debtors' Chief Restructuring
8 Officer and first-day declarant, Amish [sic] -- I'm sorry --
9 Alpesh Amin, and the Riveron team of Rick Malagodi and
10 Anthony [sic] Mittiga, as well as, from the debtors, their
11 management representatives with Alfred Poor, the Chief
12 Executive Officer, who you can see on the screen here, as
13 well; Ryan Jenkins, the Chief Financial Officer; and Ben Wu.

14 And actually, now that I look the roster of people
15 up at the moment -- I just want to make sure they're actually
16 there. Sorry. Yes, they are. Okay. Very good.

17 And last, but not least, we have the debtors'
18 investment bankers from SSG, that's Scott Victor, Teresa
19 Kohl, and Neil Gupta.

20 THE COURT: Great. Well, let me welcome all of
21 you, virtually, to Wilmington.

22 MR. SIMON: Thank you, Your Honor.

23 So we submitted, Your Honor, detailed first-day
24 motions with declarations of the Chief Restructuring Officer
25 Mr. Amin in support.

1 As mentioned by Mr. Palacio, we worked out, before
2 filing, many of the comments of the Office of the United
3 States Trustee, in collaboration and cooperation on those
4 first-day pleadings. And I think we only have one issue left
5 on the DIP, and then the default notice period, to address in
6 that regard. So we're happy to proceed with this hearing
7 however Your Honor would prefer.

8 THE COURT: I'm happy to -- I mean, I'm happy to go
9 through the motions in order and address the issues as they
10 come up, but really, whatever is appropriate, whatever works
11 for the parties is fine with me.

12 MR. SIMON: Okay, Your Honor.

13 So, if acceptable to you, as for the agenda then,
14 I'd like to provide you first a brief outline of the debtors'
15 history and businesses, then turn things over to Mr. Mohan to
16 handle a number of the first-day motions, and I'll be back
17 for the DIP financing motion.

18 THE COURT: Very well.

19 MR. SIMON: So (indiscernible) today is to provide
20 useful information on the company, how it got here, what the
21 company hopes to accomplish in these Chapter 11 cases.

22 Your Honor, moving to the debtors and their
23 background, Ideanomics, the parent of the other debtors, was
24 incorporated in the State of Nevada in 2004. It was
25 originally known as a company called Alpha Nutraceuticals and

1 in the pharmaceutical space until 2010.

2 In 2010, from about 2010 to 2017, Ideanomics'
3 primary business activity was providing premium content
4 video-on-demand services, with operations chiefly in China
5 through its subsidiaries and variable interest entities
6 under the names of China Broadband and, later, You-On-Demand.

7 Starting in 2017, Ideanomics transitioned its
8 business model to pursue market opportunities in the FinTech,
9 financial technology, space, and these were mostly wound down
10 in 2022 and 2023.

11 In the second half of 2018, Ideanomics began to
12 identify opportunities in the Chinese electric vehicle
13 industry to facilitate the large-scale conversion fleet
14 vehicles from, as we saw projected at that time, internal
15 combustion engines to EV.

16 So, from 2021 to 2023, the debtors identified
17 opportunities outside of China; more specifically, in the
18 U.S. and Europe, and formulated an acquisition strategy to
19 acquire EV and related EV-related technology assets to
20 complete a foundation for the development of vehicles and
21 verticals in the off-highway, two-wheeler, and on-highway
22 vehicle space and the associated energy and electric charging
23 service space.

24 These were primarily split into four companies:

25 Solectrac, which is a seller and distributor and

1 manufacturer of electric farming machinery, presumably
2 tractors;

3 VIA Motors, which is a provider of skateboard
4 chasses for electric trucks in Classes 3 to 5. Those are
5 medium (indiscernible) fleet vehicles like work trucks
6 (indiscernible) box delivery vehicles and the like.

7 And Energica, which is an Italian subsidiary of the
8 debtors that manufactured electric motorcycles. And that
9 entity went into an Italian insolvency proceeding in October.

10 And WAVE, which is Wireless Advanced Vehicle
11 Electification, LLC. That entity has fast, safe wireless
12 charging technology for electric vehicles in the Classes 2 to
13 8. So it is for delivery vehicles of larger size, not just
14 passenger vehicles.

15 Currently, wireless charging is done for electric
16 vehicles primarily by cables that require maintenance, other
17 human and mechanical intervention, whereas WAVE sits and,
18 being wireless, enables a vehicle to park over a device
19 manufactured by WAVE and charge without all the holdups. And
20 WAVE has actually been using this technology on customer
21 sites since approximately 2017.

22 As of the petition date, Your Honor, WAVE is the
23 only operating entity. The debtors have either shuttered or
24 stopped funding operations for the other business lines.
25 That's some background on the debtors, Your Honor.

1 In terms of how we got here, obviously, the EV
2 industry is a growth industry, it has been for some time, and
3 it's faced well documented and well publicized challenges in
4 recent years, and they, frankly, have intensified.

5 The debtors' businesses are loss-making and they --
6 it required consistent investment. So, although WAVE is a
7 leader in the technology of its business, the EV and EV-
8 adjacent market space is a cash-intensive and highly
9 competitive market. The debtors' businesses are pre-
10 profitable growth businesses that require additional capital
11 to fund, among other things, R&D, operations, manufacturing,
12 and sales.

13 Now, as stated in the first-day pleadings, the
14 debtors were able to raise a significant amount of money to
15 advance their business operations, but that availability of
16 capital has significantly decreased in the last year. And
17 indeed, this Court and other bankruptcy courts have seen a
18 number of cases involving other EV-related companies.

19 As a result of those cash flow issues, the debtors
20 undertook their previous financial and operational and
21 transactional efforts to try to right-size their operations
22 and address issues on the balance sheet, including selling a
23 variety of different assets that were owned by the debtors,
24 as discussed in the first-day dec. And while these efforts
25 extended the runway for a determination of alternatives, they

1 just were not enough to keep the debtors out of this Chapter
2 11 or -- and bankruptcy.

3 So, in terms of the filing of this case, Your
4 Honor, the debtors' goals are very straightforward: To
5 maximize value through a sale transaction that scours the
6 market for the highest and best value, highest and best bid
7 for all of the debtors' assets, and then to confirm a
8 liquidating Chapter 11 plan.

9 The debtors are entering this case with a stalking
10 horse asset purchase agreement, which we filed today, with
11 Tilou Management, the debtors' pre-petition first lien
12 secured lender and the proposed DIP lender.

13 The stalking horse bid provides for a credit bid by
14 Tilou of all of its pre-petition and post-petition secured
15 debt; payment of any secured -- any senior liens; and
16 assumption of assumed liabilities, including the payment of
17 cure costs for assigned contracts. It's also subject to
18 higher and better bids in the sale process that may come from
19 the post-petition marketing process led by the debtors'
20 investment bankers SSG Advisors.

21 The debtors intend -- and there are a variety of
22 different deadlines in the documents and, chiefly, the DIP
23 and the APA itself for the filing of the bid procedures
24 motion, Your Honor. And the debtors intend to file the bid
25 procedures motion by December 9th. And that will provide the

1 proposed bidding, auction, and sale time line.

2 The debtors believe that the assets have
3 significant value and we are optimistic about the marketing
4 process and glad to have the support of Tilou in funding that
5 process and marketing the assets for sale and being there,
6 hopefully, to purchase the assets, should that be the result
7 of the marketing, if they have the best and highest bid.

8 And following consummation of that sale, Your
9 Honor, the debtors intend to present this Court with a
10 liquidating plan that will be funded that is in -- and one of
11 the benefits of the DIP provided by Tilou, the wind-down
12 budget, is to be funded pursuant to the interim order.

13 So, Your Honor, that's a summary of who the company
14 is, how it got here, and where we intend to go during this
15 case.

16 THE COURT: Okay. Thank you, Mr. Simon. That's
17 helpful and I say the first-day papers were helpful, as well,
18 so I think I have an understanding of where we are, how we
19 got here, and what the vision is, and happy to give you the
20 opportunity to proceed through your motions, if that's where
21 we are next.

22 MR. SIMON: Thank you very much, Your Honor, and
23 yes, we will proceed.

24 At this time, I'd like to offer the declarations of
25 Mr. Amin as Chief Restructuring Officer into evidence. Mr.

1 Amin is present and available for cross-examination, if
2 necessary. We have two declarations:

3 First, there's Docket Number 13, he submitted his
4 declaration in support of the DIP financing as Exhibit B to
5 Docket Number 13.

6 And we submitted a first-day declaration at Docket
7 14.

8 THE COURT: Okay.

9 MR. SIMON: So I'd move to have the Amin
10 declarations entered into evidence.

11 THE COURT: Is there any party-in-interest that
12 objects to the admission into evidence of the two
13 declarations filed at D.I. 13 and 4, of Mr. Amin?

14 (No verbal response)

15 THE COURT: Seeing none, the declarations will be
16 admitted.

17 (Amin Declaration at D.I. 13 Exhibit B received in
18 evidence)

19 (Amin Declaration at D.I. 14 received in evidence)

20 THE COURT: Is there any party-in-interest that
21 wishes to cross-examine Mr. Amin?

22 (No verbal response)

23 THE COURT: Okay. Seeing none, then, Mr. Simon,
24 you can proceed.

25 MR. SIMON: Thank you, Your Honor.

1 I'd like to now pass the microphone to my colleague
2 Tim Mohan, who will present the debtors' first-day motions,
3 aside from the DIP.

4 THE COURT: Okay. Very well. Thank you, Mr.
5 Simon.

6 Mr. Mohan, you can proceed.

7 MR. MOHAN: Thank you, Your Honor. Timothy Mohan,
8 Foley & Lardner, on behalf of the debtors.

9 Before I start, Your Honor, I want to give a shout-
10 out to the Foley & Lardner team Nora McGuffey, Jake Gordon,
11 and Mary Forfaeil, who did the yeomen's work on these first-
12 day motions; and the Riveron team Rick Malagodi and Anthony
13 Mittiga, as well, who also spent a good amount of time
14 putting together these motions. So I wanted to start with
15 that.

16 Your Honor, unless you have a preference otherwise,
17 I plan on just going through the order -- the motions in the
18 order of the agenda filed at Docket Number 23.

19 And before I start on that, though, Your Honor, I
20 want -- two items:

21 First, as you saw at Docket Number 24, Epiq, the
22 proposed claims and noticing and agent, filed a certificate
23 of service that provides notice of today's hearing and the
24 agenda by overnight mail, email, or -- and/or fax, as
25 applicable, based on the information that we had. Given the

1 short time line here, we believe that that notice was
2 sufficient to provide parties-in-interest that may be
3 affected by these motions notice of today's hearing.

4 The second one, the second point that has been
5 reiterated by multiple parties before, here is the consensual
6 nature of these first-day motions. These motions were
7 negotiated with the debtors' pre-petition secured
8 lienholders, the debtors' DIP lender, and Mr. Cudia from the
9 U.S. Trustee's Office. And the relief requested therein
10 reflects their comments to the relief.

11 One item that we want to note is that Your Honor
12 will see a proposed interim order for the insurance motion
13 that was filed last night at Docket Number 22. That followed
14 -- after filing the motion, that followed a comment from Mr.
15 Cudia with respect to the relief requested therein and his
16 preference to have an interim order filed (indiscernible)
17 filed there, given the time line of the relief -- or the
18 requested relief and the nature of the request. So we agreed
19 with that and filed the motions there, and so -- or filed
20 that proposed order, Your Honor. Excuse me.

21 And so, with that, I'd like to go to the first-day
22 motions. I'd like to do this efficiently and effectively,
23 given the consensual nature of this.

24 So, first, I'll just start with the joint admin
25 motion filed at Docket Number 3.

1 Your Honor, I think it's pretty basic, pretty
2 straightforward. Ideanomics is a publicly held company that
3 is -- all the other debtors are consolidated into for public
4 reporting purposes. I believe this is routine and
5 appropriate under the circumstances, and we request that Your
6 Honor enter the order.

7 THE COURT: Okay. Is there any party-in-interest
8 that would like to be heard with respect to the debtors'
9 motion for joint administration filed at D.I. Number 3?

10 (No verbal response)

11 THE COURT: Okay. Seeing none.

12 I've reviewed the motion and order. I'm satisfied
13 that the relief sought is customary and appropriate and we
14 will enter that order.

15 MR. MOHAN: Thank you, Your Honor.

16 Next up is Docket Number 4, the creditor matrix
17 motion. Here, again, the standard relief here, filing
18 reflects the 30 largest general unsecured creditors,
19 modifying the requirements to file just registered holders of
20 the debtors' equity, providing notice to equity holders
21 through the transfer agent, publication on the Epiq website,
22 and filing a Form 8-K with the SEC, and then redacting
23 personally identifiable information for individual creditors
24 and shareholders.

25 I believe this is a routine request and, unless

1 Your Honor has any questions, request that the order be
2 entered.

3 THE COURT: Okay. Thank you, Mr. Mohan.

4 Is there any party-in-interest that would like to
5 be heard with respect to the creditor matrix motion filed at
6 D.I. Number 4?

7 (No verbal response)

8 THE COURT: So, Mr. Jenkins, I see you just turned
9 on your -- or you -- I don't know if you just turned on your
10 camera or it's been on. But are you -- would you like to be
11 heard?

12 (No verbal response)

13 THE COURT: And you're muted.

14 MR. JENKINS: No, Your Honor, not at this time. I
15 apologize.

16 THE COURT: Okay. And it's just -- I just find it
17 helpful, for what it's worth, if folks would generally leave
18 their cameras off, unless you want to be heard. It's not
19 that I'm not happy to see everyone, but I do find it helpful
20 to see cameras turn on as a way of signaling to me that
21 there's someone who wants the opportunity to be heard.

22 Okay. So seeing no party that would like to be
23 heard.

24 I've reviewed the motion and proposed order. I'm
25 satisfied that the relief sought is customary and appropriate

1 and we will enter that order.

2 So, Mr. Mohan --

3 MR. MOHAN: Thank you, Your Honor.

4 THE COURT: -- you can proceed.

5 MR. MOHAN: Next up, Docket Number 5, Epiq's
6 retention application.

7 So Epiq is the debtors' proposed claims and
8 noticing agent. In preparation for this case, in the cases,
9 the debtors received proposals from three different claims
10 and noticing agents, as required by the rules, and selected
11 Epiq to serve as this purpose. The -- I understand -- we
12 believe the relief to be standard, straightforward relief, as
13 required by the rules, the Local Rules and the Bankruptcy
14 Rules, and request that it be entered.

15 One thing I would note is that Epiq would also be
16 retained as an administrative agent in this case. We will
17 file a separate retention application for that relief, but I
18 just wanted to give the Court a heads-up about that.

19 THE COURT: Okay.

20 MR. MOHAN: Unless the Court has any questions, we
21 propose that the order approving the retention application be
22 entered.

23 THE COURT: Okay. Is there any party-in-interest
24 that would like to be heard with respect to the motion filed
25 at D.I. 5 to retain Epiq as the claims and noticing agent?

1 (No verbal response)

2 THE COURT: Okay. Seeing none.

3 I've reviewed the motion and proposed form of
4 order. I'm satisfied the relief is appropriate and we will
5 enter that order.

6 MR. MOHAN: Okay. The next one, Your Honor, is
7 Docket Number 6, the wages motion here.

8 This motion is (indiscernible) relief with respect
9 to the debtors' current employees at Ideanomics and WAVE and
10 for the time periods immediately prior to the filing of the
11 petition or shortly just before then, as set forth in the
12 motion.

13 High level, Your Honor, to keep status quo, pay the
14 employees any pre-petition amounts owed and they can keep
15 status quo with respect any benefit plans or other benefits
16 that employees are entitled to.

17 Your Honor, I can delve into more detail, if
18 necessary, if you ask, if you prefer. But unless otherwise,
19 we'd request that the order be entered to approve the motion.

20 THE COURT: Okay. Thank you, Mr. Mohan.

21 I've reviewed the motion and I think I understand
22 what you're asking for, and so I don't have further
23 questions.

24 Let's see if there's any party-in-interest who
25 would like to be heard with respect to the debtors' wages

1 motion filed at D.I. 6.

2 (No verbal response)

3 THE COURT: Seeing no one.

4 I have -- as I said, I've reviewed the motion and
5 order. I'm satisfied that this relief is customary and
6 appropriate, and we will go ahead and enter this order on an
7 interim basis.

8 MR. MOHAN: Great. Thank you, Your Honor.

9 Next is the taxes motion filed at Docket Number 7.

10 Again, standard order to pay any taxes on an
11 interim basis. For today's hearing, a cap of \$26,000
12 relating to current operations of the debtors' business.
13 Routine, standard, I do not believe there is anything unique
14 here. And request that the order be entered to approve the
15 interim -- that the interim order be entered.

16 THE COURT: Okay. Is there any party-in-interest
17 that would like to be heard with respect to the debtors'
18 motion seeking interim authority to pay certain pre-petition
19 taxes filed at D.I. Number 7?

20 (No verbal response)

21 THE COURT: Seeing none.

22 I've reviewed that motion and order. I'm satisfied
23 that this relief is customary and appropriate, based on the
24 record before me, and we will enter that order on an interim
25 basis.

1 MR. MOHAN: Great. Thank you, Your Honor.

2 The next one, Docket Number 8, the critical vendors
3 order.

4 As set forth in the papers, WAVE is the debtors'
5 only operating business. It's a technology company that has
6 some pretty cool assets that are advanced, and there's a
7 limited number of -- for certain parts of the equipment and
8 servicing, there's a limited number of vendors and service
9 providers that can provide the necessary goods and services
10 needed to keep that business op -- the WAVE business
11 operating.

12 We -- "we," being the debtors' professionals and
13 the debtors -- reviewed their -- the WAVE list of vendors,
14 narrowed them down according to applicable law and which
15 vendors are actually necessary and, without their services,
16 would have irreparable harm to the estate and the WAVE
17 business as a going concern, through that came up with this
18 narrow list.

19 Vendors, critical vendors that have \$735,000, a
20 little bit over that, owed, that we propose to be able to pay
21 as critical vendors. This amount was negotiated with Tilou,
22 the DIP lender, which agreed to fund the DIP amount to
23 include these critical vendors.

24 And based on that, based on the debtors' business
25 judgment, we request that the Court enter an order approving

1 the critical vendors motion on an interim basis.

2 THE COURT: Okay. Is there any party-in-interest
3 that would like to be heard with respect to the debtors'
4 motion seeking authority to pay certain pre-petition amounts
5 due to critical vendors that's filed at D.I. 8?

6 (No verbal response)

7 THE COURT: Okay. Seeing none.

8 I've reviewed the motion and order. I'm satisfied
9 the relief sought is customary and we will enter that order
10 on an interim basis.

11 MR. MOHAN: Great.

12 Next up, Your Honor, is Docket Number 9, called the
13 "NOL motion." It establishes procedures to ensure that the
14 debtors NOL assets and tax attributes that account for nearly
15 \$176 million be implemented, so just to ensure that there's
16 no potential limitation on the (indiscernible) use of tax
17 attributes.

18 Unless Your Honor has any questions, we propose
19 that Your Honor enter an interim -- the interim order filed
20 with the motion. Excuse me.

21 THE COURT: Okay. Is there any party-in-interest
22 that would like to be heard with respect to the debtors' NOL
23 motion that's filed at D.I. Number 9?

24 (No verbal response)

25 THE COURT: Seeing none, I've reviewed the motion

1 and order. I'm satisfied that this relief is customary and
2 appropriate and we will enter that order on an interim basis.

3 MR. MOHAN: Thank you, Your Honor. Three more left
4 for me here.

5 So the utilities motion at Docket Number 10. These
6 are all utilities related to the WAVE business located out in
7 Utah.

8 Consistent with practice, we are proposing a two-
9 week adequate assurance escrow, that accounts for about
10 \$24,000. That's going to be held at Citizens Bank here -- or
11 through a bank that helps us facilitate that. And so we just
12 request that an interim order be approved to approve this
13 relief here.

14 THE COURT: Okay. Is there any party-in-interest
15 that would like to be heard with respect to the debtors'
16 utilities motion that's filed at D.I. 10?

17 (No verbal response)

18 THE COURT: Seeing none.

19 I have reviewed the motion and order. I'm
20 satisfied that the relief sought is appropriate and we will
21 go ahead and enter that order on an interim basis.

22 MR. MOHAN: Thank you, Your Honor.

23 Next, the insurance motion filed at Docket Number
24 11.

25 As I mentioned before, we filed a proposed order

1 (indiscernible) at Docket Number 22. The only difference is
2 that it provides for a ten-thousand-dollar cap on the payment
3 of pre-petition amounts owed with respect to the insurance
4 program.

5 We don't believe there's any -- because there are
6 insurance policies that are subject to expire at the end of
7 this year, we want to make sure that there's -- if there's
8 any issue, that we can have the ability to pay a certain
9 amount on those, to make sure the insurance is continued.

10 Unless Your Honor has any questions, we propose
11 that the interim order be entered.

12 THE COURT: Okay. Is there any party-in-interest
13 that would like to be heard with respect to the debtors'
14 insurance motion filed at D.I. 11, as revised to reflect the
15 interim nature of the relief sought?

16 (No verbal response)

17 THE COURT: Okay. Seeing none.

18 I've reviewed the motion. I'm satisfied that the
19 relief sought is appropriate. I agree with the conclusion
20 that this is best granted today on an interim basis. But
21 with the revisions as provided, I'm very happy to enter that
22 order on an interim basis, and we will do so.

23 MR. MOHAN: Great. Thank you, Your Honor.

24 And then last is the cash management motion at
25 Docket Number 12.

1 I think the big picture here is to maintain the
2 status quo. The debtors have bank accounts at Wells Fargo,
3 Vectra Bank, which is a division of Zions Bancorporation.
4 And the idea here, again, Your Honor, is to maintain the
5 status quo using the same bank accounts, using the same forms
6 and pay any pre-petition bank fees in the ordinary course of
7 business.

8 Unless Your Honor has any questions, we request
9 that entry of the interim order be done.

10 THE COURT: Okay. Is there any party-in-interest
11 that would like to be heard with respect to the debtors' cash
12 management motion that's filed at D.I. 12?

13 (No verbal response)

14 THE COURT: Okay. Seeing none.

15 I've reviewed the motion and proposed order. I'm
16 satisfied that the relief sought is appropriate and we will
17 go ahead and enter that order on an interim basis.

18 MR. MOHAN: Great. Thank you, Your Honor.

19 That is the end of my presentation, so I'm going to
20 turn the mic back over to my colleague Mr. Simon to discuss
21 the DIP financing motion.

22 THE COURT: Okay. Very well. Thank you, Mr.
23 Mohan.

24 Mr. Simon, you can proceed.

25 MR. SIMON: Thank you, Tim.

1 Your Honor, with respect to the DIP financing
2 motion, that's D.I. 13.

3 This DIP, subject to its terms, is a senior secured
4 superpriority DIP with aggregate term loan commitments of
5 \$30,491,350.64. That includes a new money term lender in the
6 principal amount of about 11.6 million, pursuant to which
7 6.95 million will be made available to the borrowers to draw
8 under the DIP credit agreement under the interim order.

9 And 1.8 of that, approximately, Your Honor, will be
10 placed into a segregated account to fund the wind-down
11 budget. We think that's a big benefit to the estate, given
12 the circumstances.

13 Separately from that, 4.6 of additional commitments
14 will be made available based on the final order.

15 The DIP also contemplates a roll-up that is a very
16 market roll-up, in our view, of up to 18.872, approximately,
17 million dollars of the two pre-petition obligations rolled up
18 on a dollar-for-dollar basis during the interim period, and
19 then fully rolled up upon entry of the final DIP order.

20 And the amounts under the DIP are subject to the 12
21 percent non-default interest rate. If there's a default, it
22 goes up by 4 percent.

23 Importantly, Your Honor, we, as discussed, prior to
24 filing, exchanged drafts with Joe Cudia of the U.S. Trustee,
25 incorporating most of his suggestions and revisions to the

1 motion and the proposed interim order.

2 As stated in the dec and the motion, it's evident
3 that the debtors require the DIP financing. We have
4 extremely limited cash on hand. This financing, even prior
5 to the petition date, to -- had to finance the operations of
6 the company in order for a continuation of the business. The
7 alternative here, if there ever was one, really is a Chapter
8 7 liquidation. So this financing is required in order to
9 operate the business and support the Chapter 11 cases and
10 pursue the sale process and see the highest and best value
11 that can be achieved for the assets.

12 The DIP was also marketed. Riveron reached out to
13 11 different parties and only 1 party executed an NDA and
14 agreed to provide -- and agreed to provide a DIP, and that
15 Tilou Management and Consulting, the DIP lender here.

16 Moreover, Your Honor, we view the DIP facility as
17 containing terms that are beneficial to the debtors beyond
18 just the practical reality of being able to borrow the money
19 and use them to fund the sale process.

20 First, the interest rate is 12 percent, which is 4
21 percent lower than the pre-petition Tilou obligations that
22 are being rolled up; and, therefore, that reduces the
23 interest rate following the roll-up as it happens.

24 Second, there are no DIP fees except for the
25 reasonable attorneys' fees. So, generally, in circumstances

1 like this, it's not uncommon to see substantial fees, such as
2 facility fees, et cetera. Here, the DIP doesn't contain any
3 and this helps maintain liquidity.

4 Third, there is the fully funded wind-down budget
5 that's already been approved by the DIP lender, and that is
6 supposed to be funded in week five in accordance with the
7 budget, and accessible after the consummation of the sale of
8 substantially all of the debtors' assets, whether those are
9 sold to the stalking horse bidder or not.

10 Among the other terms that are beneficial, Your
11 Honor, there's the five-day default notice period that will
12 permit the debtors or any other party-in-interest the
13 opportunity to object to a termination notice if given by the
14 DIP lender. And in the event the Court cannot hear the
15 objecting party within five days, that period (indiscernible)
16 for up to three days.

17 This is the only area that I'm aware of that
18 there's an outstanding U.S. Trustee concern, which we can
19 address shortly and, of course, hear from Mr. Cudia, as well,
20 and the DIP lender.

21 So the debtors seek authorization to enter into a
22 DIP credit agreement, incur the DIP financing. The debtors
23 believe the roll-up is appropriate here. It's a key part of
24 the DIP facility. This was heavily negotiated as part of
25 extensive negotiations with Tilou over a period of months

1 towards the Chapter 11. And because of the creeping roll-up,
2 the roll-up is subject to the challenge rights of any
3 appointed committee or other party-in-interest.

4 Based on the first-day declaration and the DIP
5 declaration of Mr. Amin, I believe the debtors have satisfied
6 their burden. The debtors believe this is the best and only
7 viable option for financing under the circumstances. It will
8 allow the continuation of operations and fund the
9 administration of the Chapter 11 cases, including the sale
10 process that's projected. And it represents significant
11 value to the estates under the circumstances.

12 So, if Your Honor doesn't have any additional
13 questions about the motion or the DIP, we would request entry
14 of the interim order, provided we get to resolution on Mr.
15 Cudia's issue.

16 THE COURT: All right. So, Mr. Simon --

17 MR. SIMON: And --

18 THE COURT: So, before we get to that issue, which
19 I do want to make sure I -- you know, everyone has a chance
20 to be heard on. So I appreciate the disclosures in the
21 motion and the declaration. I just want to make sure I've
22 got the facts here right.

23 So, as I understand it from my review of the motion
24 and the declarations, the -- Tilou, the DIP lender, is owned
25 by the father of the debtors' CEO, but there isn't,

1 otherwise, a formal corporate relationship between the
2 entities. Do I have that mostly correct or in the ballpark
3 of correct?

4 MR. SIMON: Your Honor, from the debtors'
5 perspective, yes, there is not a formal relationship between
6 Tilou, a business -- a contract, a business relationship, a
7 formal relationship. He was not part of our management of
8 the company. Shane McMahon, he's the Chairman of the Board
9 of Ideanomics. He is not a manager, management member,
10 director, or officer of Tilou, upon what I've been told by
11 Tilou.

12 And we have Tilou's counsel here from the Faegre
13 law firm, who I'm sure can address Your Honor's question, as
14 well. But yes, I am not aware of any formal process of Tilou
15 being involved in our company.

16 THE COURT: Okay. And --

17 MR. SIMON: (Indiscernible) relationship.

18 THE COURT: Just to -- I mean, I'm not sure that
19 the literal definition of "insider" makes a huge difference
20 here. But do you dispute that the way -- if you work your
21 way through the way 101(31), that this is an insider
22 transaction?

23 MR. SIMON: Your Honor, I would want to consider
24 that and further consider the definition and not
25 (indiscernible)

1 THE COURT: Okay. Fair enough. This is not meant
2 to be a pop quiz. That's fine.

3 Okay. Let me hear from Mr. Cudia about the basis
4 for the objection, what the issue is that's before me.

5 MR. CUDIA: Thank you, Your Honor. Joseph Cudia
6 for the United States Trustee.

7 First, I want to take this opportunity to thank
8 debtors' counsel for working collaboratively with our office
9 to get the vast majority of our issues resolved.

10 We had actually, really, two issues with the DIP;
11 one I'm not contesting for purposes of the interim hearing,
12 which is the truncation of the challenge period. I just want
13 to get it on the record that our office opposes the
14 truncation of the challenge period. But since it's not
15 operative for purposes of the interim period, we're not
16 opposing what's currently in the order.

17 THE COURT: Okay.

18 MR. CUDIA: As far as the items that debtors'
19 counsel mentioned, in 21(c), it appears that the language
20 there regarding the emergency hearing conditions the ability
21 of parties to be heard at a default notice hearing on the
22 availability of the Court's schedule. In other words, if the
23 Court is not able to schedule a hearing for whatever reason
24 within the time provided, that would open the possibility for
25 the DIP lender to begin taking their remedies without those

1 parties being able to be heard. That's our only issues with
2 it and we wanted to bring that to your attention, Your Honor.

3 THE COURT: Okay.

4 MR. CUDIA: Thank you.

5 THE COURT: Thank you, Mr. Cudia.

6 So, Mr. Simon, are you aware of cases in which
7 courts have granted relief like you're seeking here, to allow
8 essentially, the exercise of remedies without providing the
9 opportunity to get into court?

10 MR. SIMON: No, Your Honor, I'm not.

11 THE COURT: Okay.

12 MR. SIMON: We're --

13 THE COURT: So this case isn't going to be the
14 first. So, look, let me say this. If an issue were to arise
15 where there were an emergency, one of the things we work
16 really hard to do around here is to make ourselves available
17 to resolve concerns. So I suspect this issue is highly
18 unlikely to arise where there's a situation, there's an
19 emergency, and neither I, nor anyone else, any of the judges
20 in this building, is available to jump in and hear the
21 parties and deal with the issue. It's -- we're not perfect,
22 but we do work hard to make ourselves available to resolve
23 emergency disputes when they, in fact, arise.

24 That said, in the unlikely event that we weren't,
25 for any reason, available, I'm not comfortable with the

1 notion that the relief becomes available -- that, basically,
2 the lender can engage in self-help before giving anyone the
3 opportunity to be heard. So I'd propose that we go to the
4 sort of standard language that conditions the right to -- the
5 remedy on the opportunity to have a hearing. I understand I
6 can't make the lender lend under those terms, but I think
7 this is reasonably standard.

8 So is -- are the parties able to revise the form of
9 order to reflect that?

10 MR. SIMON: That is acceptable from the debtors'
11 perspective, Your Honor.

12 THE COURT: I'm happy to hear from counsel to the
13 lender.

14 MR. SIMON: (Indiscernible)

15 THE COURT: Mr. Velocci -- I'm sorry -- Velocci.

16 MR. VELOCCI: Good afternoon, Your Honor. Thank
17 you. Frank Velocci, Faegre, Drinker, Biddle & Reath.

18 That's fine, Your Honor. Thank you.

19 THE COURT: Okay. So can the parties -- I -- Mr.
20 Cudia, do you need this to be under certification or are you
21 happy to work with the debtors and allow them to upload an
22 order that reflects revisions that you're acceptable to?

23 MR. CUDIA: Your Honor, as long as they let me know
24 what they're going to file, I'm fine with that.

25 THE COURT: All right. So I'm not going to require

1 a formal certification. I'll accept the uploading of an
2 order as essentially a representation that Mr. Cudia is okay
3 with the form of order.

4 MR. CUDIA: That's fine with the U.S. Trustee.

5 MR. SIMON: Thank you, Your Honor. We will
6 certainly follow up with Mr. Cudia as soon as possible --

7 THE COURT: Okay.

8 MR. SIMON: -- with that.

9 THE COURT: Okay. Is there anything further from
10 the debtors' perspective that I can do to be helpful. Mr.
11 Palacio?

12 MR. PALACIO: Yes, Your Honor. This is a
13 housekeeping matter at this point.

14 Prior to the hearing, we had contacted chambers --
15 and again, we want to thank your staff for being so
16 accommodating, as well as Your Honor -- with respect to a
17 second-day hearing. We have been given by Your Honor's
18 chambers January 7th, I believe at 2 p.m.

19 And what we wanted to discuss, or certainly I
20 wanted to raise with Your Honor, is an appropriate objection
21 and response deadline, understanding that a committee will
22 likely be formed in the next week or two. So I'm sure Mr.
23 Cudia is going to want to be heard on this. But that is
24 really what I wanted, to get Your Honor's attention before we
25 adjourned today.

1 With the January 7th hearing date, you would
2 typically go seven days, but it's right around the holidays.
3 We were going to seek, if Your Honor was amenable to it, an
4 objection deadline of the 27th.

5 THE COURT: So, Mr. Palacio, candidly, I'd rather -
6 - subject to hearing from Mr. Cudia. If Mr. Cudia doesn't
7 object to that, I'm not going to. But I'd, frankly, rather
8 jam myself and, therefore, to some extent, the debtors than
9 put the committee in a position where, when it's just being
10 formed over the holidays, it has to immediately jump in and
11 meet an objection deadline. So I would just as soon go to
12 January 2nd, which is five days, not seven days, before the
13 hearing.

14 But let me -- Mr. Cudia, does your office have a
15 preference in this regard?

16 MR. CUDIA: Our office would prefer the 2nd, Your
17 Honor. Getting a committee formed and up to speed during the
18 holidays is going to be a little more difficult than normal.

19 THE COURT: Yeah, okay. So I -- that's -- I mean,
20 Mr. Palacio, let me give a chance to be heard if that causes
21 enormous grief on your end. I appreciate you'd prefer it be
22 earlier, but I just think, under the circumstances of -- you
23 know, the role of the committee, in connection with second
24 day relief, is important to a fair process. And under the
25 circumstances here, I think I'd rather have one less day and

1 to make you all deal with having one less day, rather than
2 require a filing during the week when lots of folks are not
3 working.

4 MR. PALACIO: Understood, Your Honor, and I
5 appreciate all of your comments, I don't disagree with any of
6 them.

7 The thing from our end -- and it's, again, just
8 we'll seek Your Honor's guidance on this -- we certainly
9 would like the opportunity to file a reply. And then that
10 flies up against an agenda --

11 THE COURT: Understood. You know what? How about
12 the following? The second-day hearing is the 7th at 2 p.m.
13 If you -- anything you get me by the 6th at the -- like 5
14 p.m. on the 6th, I will read before I get on the bench on the
15 7th. Again, I'd rather jam myself than others in these
16 circumstances.

17 MR. PALACIO: Okay.

18 THE COURT: And you know, when you file whatever
19 replies, if you'd just then amend the agenda --

20 MR. PALACIO: Okay.

21 THE COURT: -- so that I know what's in front of
22 me. But I don't think you need a further motion seeking
23 leave. You can take this transcript as authority to file a
24 reply at -- you know, any time before the close of business
25 on the 6th,.

1 MR. PALACIO: That works perfectly, Your Honor,
2 because our agenda would be due on the 3rd, which we would
3 have any responses by the 2nd. So we hear you loudly and
4 clearly, we'll work with that, Your Honor.

5 THE COURT: Okay.

6 MR. PALACIO: Thank you.

7 THE COURT: Well, I appreciate everyone's
8 flexibility under the circumstances.

9 And is there any objection from any party-in-
10 interest to setting the second-day hearing at 2 p.m. on the
11 7th?

12 (No verbal response)

13 THE COURT: All right. So, if you can then, Mr.
14 Palacio, go in and you upload the orders, obviously reflect
15 the --

16 MR. PALACIO: The dates.

17 THE COURT: -- the dates there, the hearing date
18 and the objection deadline, that would be terrific.

19 MR. PALACIO: Will do, Your Honor.

20 THE COURT: Okay. From the debtors' perspective,
21 is there anything else that I can do to be helpful while
22 we're here this afternoon?

23 MR. SIMON: Nothing more, Your Honor. Thank you
24 very much.

25 THE COURT: Okay. Is there any other party-in-

1 interest that would like the opportunity to be heard while
2 we're here today?

3 (No verbal response)

4 THE COURT: Okay. Let me just say I, you know,
5 very much appreciate that hearings like this are as simple
6 for me as they are because of the hard and good work done by
7 parties beforehand to work through issues and to solve
8 problems. So I -- it's not unnoticed that you all worked
9 cooperatively to get this to be a consensual hearing, and I
10 want to express my thanks to all of the parties, to the
11 Office of the United States Trustee for all of their work.
12 It's extremely helpful to the Court, so you all have my
13 thanks.

14 And with that, if something were to arise where you
15 need us before the second day hearing, you all know how to
16 reach us. And if I don't see you until then, I hope everyone
17 has happy holidays. And with that, we're adjourned. Thank
18 you.

19 COUNSEL: Thank you, Your Honor. Thank you, Your
20 Honor.

21 (Proceedings concluded at 1:28 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in black ink, appearing to read "Coleen Rand", is written over a horizontal line.

December 13, 2024

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

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